THIS FORM IS TO BE USED ONLY BY THE SECRETARY TO THE BOARD OR AS OTHERWISE SPECIFICALLY DIRECTED BY THE BOARD.	FORM NO. G-21 (9-83) UNITED STATES OF AMERICA RAILROAD RETIREMENT BOARD TRANSCRIPT OF BOARD ORDERS	TRANSCRIPT NO. Special PAGE 1 OF PAGES DATE TRANSCRIPT RELEASED

I CERTIFY THAT THE FOLLOWING IS A TRUE AND CORRECT TRANSCRIPT

OF BOARD ORDER(S) NUMBERED 13-33

ISSUED BY THE BOARD ON June 27, 2013

SECRETARY TO THE BOARD

BOARD ORDER 13-33

Termination of Disability Annuities
Awarded Based on Medical Evidence from Dr. Peter Ajemian

ARTICLE I. PURPOSE.

The Railroad Retirement Board (RRB) hereby establishes the policy set forth in this Order to govern the adjudication of all disability annuities paid under section 2(a) of the Railroad Retirement Act, where the decision that the applicant is disabled was based in whole or in part upon evidence furnished by Dr. Peter Ajemian. The purpose of this policy is to protect the Railroad Retirement Account from fraudulent claims while ensuring payment of valid disability claims.

ARTICLE II. FINDINGS.

A. In section 7 of the Railroad Retirement Act, Congress granted to the Railroad Retirement Board all powers and duties necessary to administer the Railroad Retirement Act. Congress declared in that provision that decisions by the Railroad Retirement Board upon issues of law and fact relating to annuities shall not be subject to review by any other administrative or accounting officer, agent or employee of the United States. Further, by incorporating section 5 of the Railroad Unemployment Insurance Act, section 7 requires that findings of fact and conclusions of law of the Board in the determination of any claim for benefits shall be binding and conclusive for all purposes and upon all such administrative or accounting officer, agent or employee.

B. Pursuant to the authority granted by section 7 of the Railroad Retirement Act, the Railroad Retirement Board makes the following findings of fact and conclusions of law:

1. The Long Island Rail Road, a covered railroad employer under the Railroad Retirement Act, had established a private pension plan for employees which provided for early retirement with a full pension at age 50 with 20 years of Long Island Rail Road service. This plan has subsequently been superseded by another. Long Island Rail Road retirees under this subsequent plan are not subject to this Order.

2. A substantial number of Long Island Rail Road employees who retired under the now replaced Long Island Rail Road pension plan also applied for an occupational disability annuity under section 2(a)(1)(iv) of the Railroad Retirement Act.

3. On October 27, 2011, the United States Attorney for the Southern District of New York filed fraud charges against two physicians and one of their office managers, two individuals (facilitators) acting as liaison between the physicians and applicants for disability annuities under the Railroad Retirement Act, and seven railroad retirement disability annuitants (including one of the physicians' liaisons) who were also recipients of Long Island Rail Road pensions. The U.S. Attorney charged that the physicians, facilitators and disability annuitants falsely claimed to be disabled at the time of early retirement under the Long Island Rail Road pension plan in order to receive extra benefits to which they were not entitled. Additional indictments were issued through September 2012, bringing the total number of defendants to 32.

4. On May 22, 2012, the United States Attorney for the Southern District of New York announced the creation of a Voluntary Disclosure and Disposition Program, which was offered to former Long Island Rail Road employees who were awarded a disability annuity under the Railroad Retirement Act. Employee annuitants who were accepted into the Program by the U.S. Attorney were required to sign the following statement:

> I hereby attest that in connection with my application for Railroad Retirement Board disability benefits, I or doctors or others on my behalf made what I understood to be false and/or misleading statements with respect to my

health condition, ability to work, and/or my eligibility for RRB disability benefits. I declare under penalty of perjury that my statements in this document are true and correct, pursuant to Title 28, United States Code, Section 1746.

A total of 44 railroad retirement disability annuitants were accepted by the U.S. Attorney into the Voluntary Disclosure and Disposition Program.

5. On May 22, 2012, the Railroad Retirement Board issued Board Order 12-29, which set forth the processing of Agreements signed under the Voluntary Disclosure Program. Pursuant to Board Order 12-29, a disability annuitant who signed an Agreement was considered to have cancelled his or her disability application. Board Order 12-29 considered that payments made under the cancelled application were recovered by a compromise in exchange for information provided to the U.S. Attorney by the annuitant.

6. Fourteen former Long Island Rail Road employees who have pled guilty to making false statements regarding their abilities furnished medical evidence from Dr. Ajemian to support their benefit claims.

7. In the transcript testimony by Dr. Peter Ajemian in the guilty plea proceeding on January 18, 2013, in the case entitled United States of America v. Peter Ajemian, U.S. District Court, Southern District of New York, No. 11 Cr. 1091, Dr. Ajemian testified under oath that sometime about 2002 he began seeing large numbers of employees of the Long Island Rail Road, and during the period 2004 to 2008 he prepared narratives reciting a medical basis for disability annuity claims when "in truth and in fact these employees were not in fact disabled."

8. In a memorandum addressed to the Board dated February 1, 2013, entitled "Immediate Benefit Termination of Disability Annuitants Affiliated with Dr. Peter J. Ajemian," the Inspector General of the Railroad Retirement Board cited the unreported case of United States of America v. Danny Joe Dillard, No. 10-2672, (U. S. Court of Appeals, Eighth Circuit, August 3, 2011). The Inspector General stated:

> This opinion is relevant because [Dr.] Ajemian's clients acted illegally by causing to be submitted or knowingly submitting fraudulent medical

> documents to the RRB which were material to the RRB's adjudication process. In fact, Ajemian's fraudulent medical documentation formed the foundation of the RRB's decision to approve and pay these disability benefits. Since the RRB approved and paid these benefits based upon the annuitants' illegal actions, the RRB must immediately terminate benefits (including Railroad Medicare coverage, if applicable) for all annuitants whose disability awards were based upon Ajemian's fraudulent medical documentation.
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> It is imperative that the RRB take immediate action to terminate these benefits because failure to act will cost the RRB approximately $2 million dollars (sic) per month in improper benefits.

In a later memorandum to the Board dated April 1, 2013, the Inspector General stated:

> This memorandum reiterates, once again, my position that if [Dr.] Ajemian's name appears in any RRB disability application or on any supporting documentation, the entire RRB disability application is tainted by Ajemian's admitted fraud and is nullified in its entirety regardless of any other additional medical documentation by a different physician. It is my view that the benefits must be terminated without exception.

9. On May 24, 2013, the District Court sentenced Dr. Ajemian to eight years for conspiracy and health care fraud. The Board notes that Dr. Ajemian was ordered to make restitution of $116.5 million. In the Statement by the Court Regarding the Defendant's Sentence, the Court noted that Dr. Ajemian engaged in the charged offenses for more than 10 years, from 1997 to 2008. Dr. Ajemian submitted medical reports compiled for each claimant over a period of time during which he performed unnecessary or bogus medical tests and fabricated treatments and narrative paper work, all pre-planned and packaged to justify what essentially amounted to a predetermined recommendation that the employee was disabled.

10. Section 5 of the Railroad Retirement Act requires that an application for any payment under the Act shall be made and filed in such manner and form as the Board may prescribe.

11. As Dr. Ajemian admitted he provided false medical records in hundreds of cases, the Board therefore finds that any application by any applicant of at least age 50 with at least 20 years of creditable railroad service which includes medical evidence supplied by Dr. Ajemian is invalid and must be re-filed.

ARTICLE III. DIRECTIONS TO AGENCY STAFF

1. The Director of Programs shall review the claims of Long Island Rail Road pension recipients who are currently receiving an annuity under the Railroad Retirement Act on the basis of disability, and shall identify the claims filed at age 50 or later with 20 years of railroad service which considered medical evidence from Dr. Ajemian. Disability annuities are converted to retirement annuities based on age when the annuitant attains "full retirement age" as defined under the Social Security Act.

2. The Director of Programs shall notify each employee annuitant that pursuant to this Order, the employee annuitant's payment will end the last day of the month following the third month following the date of the notice. Where the employee annuitant has been determined to be entitled to Medicare, the employee annuitant shall be notified that Medicare entitlement will end as well. Where a spouse annuity has been awarded, the spouse annuitant shall be notified that payment will end with the month the employee annuity payment ends.

3. The Director of Programs shall notify each employee annuitant that if he or she believes that he or she is disabled or is otherwise eligible for an age and service annuity, a new application may be filed. In a determination based on a new application, the Director of Programs shall not consider any evidence furnished by Dr. Ajemian. All benefit determinations will be made under the law on the basis of the new application, except that an employee annuity applicant determined to have a "current connection" as defined by the Railroad Retirement Act at the time of the initial application shall be determined to have retained the current connection at the time a new application is filed under this Order.

4. Without regard to whether the employee annuitant pursues an administrative appeal of the termination of the disability annuity based on Dr. Ajemian's evidence, or files a new application based on current evidence, payments for months prior to the month of termination of entitlement based upon the first application shall not be reopened.

5. Where an employee annuitant has previously received a notice that his or her disability annuity payment has terminated, and that annuitant (and any spouse whose annuity entitlement has also been terminated pursuant to the employee annuitant's notice), requested reconsideration of the termination of payment, the Director of Programs is to issue the notice described in paragraphs 3 and 4 of this Article as a decision on the request for reconsideration. Where such an annuitant has not requested reconsideration, the Director of Programs is to issue a new decision in accordance with paragraphs 3 and 4 of this Article of this Order.

ARTICLE IV. DELEGATION OF AUTHORITY

The Director of Programs is authorized to issue such internal agency procedure and guidance as necessary to implement this Order.

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